WARREN W. NISSLEY

IBLA 83-5 Decided May 31, 1983

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting simultaneously filed noncompetitive oil and gas lease application, CA 12824.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

   An oil and gas lease application, form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

   A simultaneous oil and gas lease application which is not signed and dated in the space provided on the card must be rejected.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

   A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

   Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

5. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

   A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

APPEARANCES: Warren W. Nissley, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Warren W. Nissley has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 4, 1982, rejecting his noncompetitive oil and gas lease application, CA 12824, for failure to complete his simultaneously filed application form. Appellant's application was drawn with first priority for parcel number CA 519 included on the May 3, 1982, list of lands available for simultaneous filing. The application was rejected by BLM because appellant had failed to sign and date it, and also because questions (d), (e), and (f) on the application (form 3112-1 (July 1980)) had not been answered and, therefore, the application had not been fully completed as required by 43 CFR 3112.2-1. 1/

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?"

The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes). (Original in italics.)

In his statement of reasons, appellant presents several arguments:

(1) BLM has raised the "filing fee" from $10 to $75 as a means of increasing the Government's income from oil and gas leasing, not merely to defray the costs of processing applications. In effect the new fee creates a lottery sale. The BLM now has additional positive obligation, therefore, to avoid confiscation of fees for innocent errors or oversights brought about by its own carelessness.

(2) Under Subpart 3112, BLM in May 1982 was using two different application forms (3112-1 and 3112-6) in its several state offices. The requirements for filing on these two forms are very different. Among other differences, Form 3112-6 provides space on its face for a single statement of qualifications to cover all offers to lease made by the applicant, whereas form 3112-1 provides space on its backside for a separate statement of qualifications to accompany each offer to lease. Under these circumstances, the applicant had no choice but to rely on instructions issued by each state office, and instructions on the specified application form itself, to determine how an application was to be filed.

(3) On May 3, 1982 the California BLM office issured [sic] its "Notice of Lands Available for Oil and Gas Filings" * * *. This Notice specified "Bureau Form 3112-1 (July 1980)" as the appropriate form for application. The Notice also gave detailed instructions * * * for filing out the face of Form 3112-1. The Notice made no mention of the existence of the backside of Form 3112-1.

(4) BLM has circulated two versions of Form 3112-1 dated respectively July 1980 and September 1981 * * *. Each of these Forms when shipped by BLM has a section headed "Detach this portion - do not send to BLM". The July 1980 version of the detachable portion says to submit a "$10 filing fee"; the September 1981 version says to submit a "$25 filing fee"; both versions say "personal checks are not acceptable". The May 3, 1982 California BLM Notice, however, said to submit a "$75 filing fee" and indicated that personal checks were acceptable. Given that the detachable portion was totally inaccurate in all these vital substantive respects, the applicant surely was justified in ignoring other instructions on the detachable portion.

(5) Looking to Form 3112-1 itself, the applicant found on its front side, entitled "Simultaneous Oil and Gas Lease Application", a section entitled "Instructions". These instructions told precisely how to fill out the front side, but gave no mention of the existence of the backside of Form 3112-1.

(6) In light of the above, the applicant was justified in never turning over Form 3112-1, believing that he had fully conformed to requirements of the California BLM office by properly filling out the front side of Form 3112-1 and submitting same to the BLM office along with the required filing fee during the specified filing period.

(7) The California BLM office received the subject application date-stamped it on the reverse side, entered it in the drawing and cashed the applicant's check. On June 11, 1982, the applicant's name and address were circulated on the California BLM office's "Official File" as the applicant selected with first priority.

(8) The applicant is properly qualified to hold an interest in a lease and is prepared to supply the California BLM office all evidence of qualifications required by Subpart 3102 of 43 CFR part 3100, both as of the date of the filing and the date of lease issuance.

(9) The requirement that a statement of qualifications be supplied prior to or simultaneously with submission of each individual offer to lease is solely for administrative convenience of the BLM. Such a purely procedural requirement should not be enforced in light of the substantive facts and BLM errors cited above. [Emphasis in original.]

The Department has promulgated regulations that provide for the simultaneous filing procedure to determine the first-qualified applicant for certain leases. 43 CFR Subpart 3112. The Department has consistently required strict compliance with the requirements relating to lease applications, and failure to complete any part of an application will disqualify an applicant. See Sorensen v. Andrus, 456 F. Supp. 499, 501 (D. Wyo. 1978), and cases cited therein. Under section 17 of the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (Supp. V 1981); see Udall v. Tallman, 380 U.S. 1 (1965).

[1, 2] Departmental regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) 43 CFR 3112.6-1(a) provides that any application not filed in accordance with section 3112.2 shall be rejected. This Board has consistently held that a simultaneously filed application is not complete in accordance with section 3112.2-1(a) or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. Fen F. Tzeng, 68 IBLA 381 (1982); Dennis M. Joy, 66 IBLA 260 (1982); John Gahr, 65 IBLA 268 (1982), aff'd, Gahr v. Watt,

Civ. No. 82-0410K (D. Wyo. Mar. 28, 1983); Charles Y. Neff, 64 IBLA 234 (1982), aff'd, Neff v. Watt, Civ. No. 82-0337-D (D. Wyo. Jan. 21, 1983). Similarly, the Board has consistently held that a simultaneous oil and gas lease application not properly signed or dated in the spaces provided on the card must be rejected. Wilfred Plomis, 67 IBLA 237 (1982); Bonita L. Ferguson, 61 IBLA 178 (1982). 2/

Questions (d) through (f) are included in a list of affirmative statements and questions on form 3112-1 recognized as a certification of the applicant's qualifications with respect to that particular lease application. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3112.2-3; 3/ the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same period (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the form serve that purpose. The failure to check the appropriate box in response to each question is simply noncompliance with the regulations and creates serious defects in the certification of an applicant's qualifications that are far from trivial. Fen F. Tzeng, supra.

The California State Office used form 3112-1 for the May 1982 drawing as the form approved by the Director. See 43 CFR 3112.2-1(a). Wyoming, Colorado, and Nevada were States approved at that time to use the newer application form. 47 FR 14487 (Apr. 5, 1982). 4/ Appellant cannot claim any confusion as to the form to be filed for the drawing at issue as the list of lands available posted by the California State Office stated that form 3112-1 was the proper form, and appellant submitted the proper form. Unfortunately, appellant failed to follow the instructions on the form. Appellant was on notice of the requirement that the approved form, 3112-1, used in California, had to be completed.

[3] Appellant states that he is prepared to supply the California State Office, BLM, with "[a]ll evidence of qualifications required by Subpart 3102 of 43 CFR Part 3100, both as of the date of the filing and the date of lease issuance." Appellant in essence asserts that he is prepared to "cure"

2/ The signing and dating of the lease application is a certification of applicant's qualifications at the time of application including the fact that no parties in interest other than those disclosed exist, that applicant has no interest in any other application for the same parcel, and that applicant has the required citizenship. Sorenson v. Andrus, supra at 501.

3/ Form 3112-1 (July 1980) refers to 43 CFR 3102.2-7 (1981) as requiring the disclosure of other parties in interest. That regulation was revoked effective Feb. 26, 1982, and replaced with 43 CFR 3112.2-3 for simultaneous filings. See 47 FR 8544 (Feb. 26, 1982).

4/ California was scheduled for use of form 3112-6(a) as the approved form beginning November 1982. 47 FR 40,412 (Sept. 14, 1982).

his application. That right, however, does not exist with reference to a simultaneously filed application. Giving an unqualified first-drawn applicant the opportunity to make an amended filing would infringe on the rights of the second-drawn, first-qualified applicant. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); accord, Moss v. Andrus, Civ. No. 78-1050 (10th Cir. Sept. 20, 1978). In the simultaneous filing system, an applicant must establish its qualifications at the time of the filing. Impel Energy Corp., 64 IBLA 92 (1982). A defective application submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence after the drawing because an amendment is effective for lease offer purposes only from the time it is received and cannot relate back to the date of the filing. See John L. Messinger, 65 IBLA 20 (1982); Bryan O. Blevins, 63 IBLA 304 (1982). Applications received in the 15-working day-period set aside for filing applications are considered to have been simultaneously received on the last day allowed for filing. A drawing is held to determine the priority of applicants to receive a lease. See 43 CFR 3112.3-1(a). The applicant with the highest priority who is also qualified to receive a lease is the party to whom a lease is issued. See Sorensen v. Andrus, supra. To allow amendment of a defective application would prejudice the right of the junior offeror, whose priority attaches eo instante upon failure of the applicant having first priority to qualify. See Ballard E. Spencer Trust, Inc., supra.

[4] Appellant states that his application was received and date-stamped by BLM, entered into the drawing, and was selected with first priority. However, appellant has no right to presume that he should receive a lease simply because his application was chosen first, since it should have been clear that he would not have a lease unless he was qualified and his application and offer were accepted by BLM. Robert M. Myers, 63 IBLA 100 (1982). The regulations make it abundantly clear that an application can be rejected even after selection. Betty J. Thomas, 56 IBLA 323 (1981). The regulation at 43 CFR 3112.5(b) notes that failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in that section or any reasons set forth in section 3112.6. As noted, section 3112.6(a) makes clear that an application will be rejected if not filed in accordance with section 3112.2 which requires that applications be "signed" and "completed." We may not justify a departure in a single case from an otherwise consistent policy of rejecting applications that do not conform to the regulation. See McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

[5] A first-drawn application does not establish automatic entitlement to a lease, but constitutes a mere application to lease subject to all the defects for which an application may be rejected. An offer to lease for oil and gas does not create a property right in the offeror, but is merely a hope or expectation. See McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Hannafin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971). Thus, the rejection of an oil and gas lease offer can be properly sustained even for reasons relating to administrative convenience and the orderly conduct of the Department's leasing program. Fen F. Tzeng, supra; Irvin Wall, 67 IBLA 301 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge